Supreme Court, U.S.
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In The

Supreme Court of the United States

AUGUSTUS J. SIMMONS,

Petitioner,

vs.

UNITED STATES,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Federal Claims

PETITION FOR WRIT OF CERTIORARI

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93 pp

QUESTION PRESENTED

When the Government (F.A.A.) physically invaded, appropriated, and converted petitioner's private property under exclusive authority of 49 U.S.C. § 44502, in addition to a joint obligation under the contract of guaranty under Federal Grant Agreement #9-06-009-5708 (1955), (49 U.S.C. § 47109), into an "overriding federal navigational servitude" with the installation, operating, and maintenance of navigational instrumentation for exclusive jurisdictional control of all air traffic in, on, and around Bradley Airport, Connecticut's premier airport, creating a public right of access to the airport – did the Government lack authority to open the airfield to the public without any obligation whatever to pay fair just compensation under the eminent domain clause of the Fifth Amendment to the United States Constitution under the logic of *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922)?

PARTIES TO PROCEEDING

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TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO PROCEEDING	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	1
STATEMENTS OF JURISDICTION	1
STATUTES AND CONSTITUTIONAL PROVISIONS	7
STATEMENT OF THE CASE	8
REASONS FOR GRANTING WRIT	10
STATUTE OF FRAUDS	17
A DAY IN COURT	19
CONCLUSION	21

APPENDIX EXHIBITS

A. Appeals Court Decision ..... App. 1

B. Court of Claims Order ..... App. 4

C. 1955 Grant Agreement ..... App. 12

D. 1974 Lease ..... App. 18

E. Denial of Deeds ..... App. 29

F. Withdrawal (Rogin-Hirtle) ..... App. 32

G. Return Funds to Treasury ..... App. 34

H. May 1971 FAA Letter ..... App. 36

I. Original Complaint ..... App. 41

J. May, 2000 Conn. Supreme Ct. Order ..... App. 54

K. Referee Letter Re: Notices ..... App. 55

TABLE OF AUTHORITIES

Page

CASES

Ackerman v. Union & New Haven Trust, 91 Conn. 500, 100 A.22 (1917) 21

Armstrong v. Manzo, 380 U.S. 545 (1965) 15

Baldwin v. Hale, 1 Wall 223 (1863) 15

Basilicato v. Public Utility Control, 197 Conn. 320, 487 A.2d 48 (1985) 2

Benz v. Walker, 154 Conn. 74, 221 A.2d 841 (1866) 20

Brandriff v. Sellas, 40 Conn. Supp. 243 (1985) 24

Broca v. Broca, 181 Conn. 463, 435 A.2d 1016 (1980) 2, 23

Bryan v. Reynolds, 143 Conn. 456, 123 A.2d 192 (1956) 19

Carter v. Carter, 147 Conn. 238, 159 A.2d 173 (1960) 24

Case v. Humphrey, 6 Conn. 130 (1826) 2

Chapel High v. Cavallaro, 141 Conn. 407 (1854) 3

Chicago B. & O. R. Co. v. Chicago, 166 U.S. 226 (1897) 21

City of San Jose v. Great Oaks, 237 Cal.Rptr. 845 (Cal.App. 1 Dist. 1987) 13

Clover v. Urban, 108 Conn. 13, 142 A 389 (1928) 2

Connecticut v. Doerr, 501 U.S. 1, 115 L.Ed.2d 1, 111 S.Ct. 2105 (1991) 13, 15

Corsino v. Grover, 148 Conn. 299, 170 A.2d 267 (1961) 21

TABLE OF AUTHORITIES – Continued

Page

Fuentes v. Shevin, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972) 14

Grannis v. Ordean, 234 U.S. 385 (1914) 15

Griggs v. Allegheny County, 369 U.S. 84, 82 S.Ct. 531, 72 L.Ed.2d 585 (1962) 10

Hartford National Bank & Trust v. Tucker, 178 Conn. 472, 423 A.2d 141 (1979) cert. denied 445 U.S. 904, 100 S.Ct. 1079, 63 L.Ed.2d 319 (1980) 24

Harvey v. Elliot, 167 U.S. 409 (1897) 15

Harwood v. U.S. Shipping, 300 F. 433 (Dist. Court, Conn. (1924)) 14

Kaluczky v. City of White Plains, 57 F.3d 202 (2d Cir. 1995) 3

Kenworthy v. Kenworthy, 180 Conn. 129 (1980) 7

Kohl v. United States, 91 U.S. 367, 23 L.Ed. 449 (1876) 12

Kukanskis v. Griffith, 180 Conn. 501 (1980) 14

Liberty Bank v. Armstrong, 36 Conn. Supp. 629, 423 A.2d 171 (1980) 19

Lowrance v. Achtyl, 20 F.3d 529 (2d Cir. 1994) 3

Lynch v. Household Fin., 405 U.S. 538, 92 S.Ct. 1611, 31 L.Ed.2d 424 (1972) 14, 23

Manafort Bros. v. Kerrigan, 154 Conn. 112, 222 A.2d 218 (1966) 21

Martin v. Hunter's Lessee, 14 U.S. (1 Wheat) 304 (1916) 2, 24

Matthews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) 15

TABLE OF AUTHORITIES – Continued

Page

Mitchell v. W.T. Grant Co., 416 U.S. 600, 94 S.Ct. 1895, 40 L.Ed.2d 406 (1974) 14

Mullane v. Central Hanover B. & T. Co., 339 U.S. 306, 94 L.Ed 865, 70 S.Ct. 652 (1950) 24

Natale v. Town of Ridgefield, 170 F.3d 258 (1999) 3

North Georgia v. Di-Chem, 419 U.S. 601, 95 S.Ct. 719, 42 L.Ed.2d 751 (1975) 14

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922) i

Penn Central Transp. v. New York City, 438 U.S. 104 (1978) 21

Phelps v. United States, 274 U.S. 341, 47 S.Ct. 611, 71 L.Ed. 1083 (1927) 13

Regan v. Kirk, 140 Iowa 302, 118 N.W. 317 (1908) 18

Russo v. Watertown, 184 Conn. 30, 441 A.2d 56 (1981) 20

Seaboard Airline R. Co. v. United States, 261 U.S. 299, 43 S.Ct. 354, 62 L.Ed. 664 (1923) 13

Shelton v. Wolthausen, 80 Conn. 599 (1908) 20

Simmons v. Wetherall, #163875 (1970) 3, 15, 18

Simmons v. Wetherall, 180 Conn. 587 (1980) 10

Smith v. Tramel, 68 Iowa 488, 27 N.W. 471 (1886) 18

Sniadich v. Family Fin. Corp., 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed. 2d 349 (1969) 14

Strong v. Strong, 8 Conn. 408 (1831) 2

United States v. Causby, 328 U.S. 256 (1946) 22

TABLE OF AUTHORITIES – Continued

Page

United States v. Commodities Trading Corp., 339 U.S. 121, 70 S.Ct. 547, 94 L.Ed. 707 (1950) 11

United States v. Dow, 357 U.S. 17, 78 S.Ct. 1038, 22 L.Ed.2d 1109 (1958) 12

United States v. Fuller, 409 U.S. at 488, 93 S.Ct. at 803 (1973) 11

United States v. Miller, 317 U.S. 360, 63 S.Ct. 276, 87 L.Ed. 336 (1943) 10, 12

United States v. Reynolds, 397 U.S. 14, 90 S.Ct. 803, 25 L.Ed. 2d 12 (1970) 10

United States v. 564.54 Acres, 441 U.S. 506, 99 S.Ct. 1854, 60 L.Ed.2d 435 (1979) 12

Village Creek Homeowner's Assoc. v. Public Utilities Comm., 149 Conn. 336, 170 A.2d 732 (1961) 2

Washington Market v. Dist. of Columbia, 172 U.S. 361, 43 L.Ed. 478, 19 S.Ct. 218 (1899) 17

Wenzel v. Danbury, 152 Conn. 675, 211 A.2d 683 (1965) 21

Williams v. Ives, 25 Conn. 568 (1857) 3

Windsor v. McVeigh, 93 U.S. 274 (1876) 15

Wolfe v. Wallingford Trust, 124 Conn. 507, IA.2d 246, 117 A.L.R. 932 (1938) 17

Young v. Margiotta, 136 Conn. 429, 71 A.2d 924 (1950) 24

STATUTES, CONSTITUTIONAL PROVISIONS

28 U.S.C. § 1331 13

28 U.S.C. § 1491(a) 1

TABLE OF AUTHORITIES – Continued

Page

42 U.S.C. § 4628 8

49 U.S.C. § 1701 *et seq.* 5

49 U.S.C. § 47109 ..... i, 22

49 U.S.C. § 44502 ..... i, 3

C.G.S. § 48-17a, b, c 20, 21

C.G.S. § 48-21 16

Fifth Amendment ..... *passim*

Fourteenth Amendment ..... *passim*

MISCELLANEOUS

A.A.D.A. 5

Federal Grant Agreement 9-06-009-5078 ..... 2, 3, 22

Title III 42 U.S.C. § 4651-4655 3

Uniform Act P.L. 91-646 (1971), 42 U.S.C. § 4601 *et seq.* 7, 11, 21

Practice Book Sec. 17-11 thru 17-17 Inc 19

Conn. Special Act #170 (1969) 20, 21

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT OF WASHINGTON, D.C.

Petitioner/owner Augustus Simmons requests that this Court issue a writ of certiorari to review the decision of the United States Court of Appeals for the Federal Circuit which became final on January 10, 2003, wherein the Appeals Court altered the decision of the Court of Federal claims, dismissing the complaint without prejudice – to a dismissal *with* prejudice. (Appendix A).

OPINIONS BELOW

Augustus Simmons, Petitioner/owner filed a three count complaint with the United States Court of Federal Claims on April 10, 2002 seeking just compensation for an airport navigational servitude imposed upon the owner – WITHOUT JUST COMPENSATION.

The United States Court of Federal Claims – ORDER – Docket #02-301L dismissing the complaint (Appendix I) on August 6, 2002 without prejudice for lack of jurisdiction, that contains the entire opinion is listed as (Appendix B).

STATEMENTS OF JURISDICTION

This court has jurisdiction over all claims found upon the constitution of the United States or . . . upon any contract, express or implied with the government of the United States. 28 U.S.C. § 1491(a). This claim arises from

the breach by the defendants of their contractual obligation under Federal Grant Agreement #9-06-009-5078 (1955).

LACK OF JURISDICTION BY CONNECTICUT SUPREME COURT IN SIMMONS V. WETHERALL 180 CONN 587 (1980).

SUBSTANTIVE DUE PROCESS

"Both the subject matter and parties must be before the Court, and jurisdiction of one without the other will not suffice, the two must concur or the judgment will be void in any case in which the Court assumes to act." "It is an acknowledged principle . . . of every court in the world that not only the decisions, but everything done under the judicial process of a court, not having jurisdiction, are IPSO FACTO VOID." *Broca v. Broca,* 181 Conn. 463, 468, 435 A.2d 1016 (1980); *Clover v. Urban,* 108 Conn. 13, 17-18, 142 A 389 (1928); *Strong v. Strong,* 8 Conn. 408, 412 (1831) quoting *Martin v. Hunter's Lessee,* 14 U.S. (1 Wheat) 304, 364 (1916). Since there was no actual service of process, any coerced judgment was "extra-judicial and void." See *Case v. Humphrey,* 6 Conn. at 139.

It is a basic tenet of our judicial system that unless a duly authorized and directed officer makes service and return of a writ of summons (or Attachment) and complaint there is no MESNE process. *Basilicato v. Public Utility Control,* 197 Conn. 320, 325, 497 A.2d 48 (1985); *Village Creek Homeowners Association v. Public Utilities Comm.,* 149 Conn. 336, 339, 170 A.2d 732 (1961); *Case v. Humphrey,* 6 Conn. 130, 139 (1826). Failure of the officer

to make attestation on the copy served or delivered invalidates the Attachment. 3 Conn. Supp. 407, 414 (1935).

Following attachment and service on the defendant, the writ, properly endorsed to show the property attached, must be returned to court, as in the case of any process, failure to make return, or failure to make proper endorsement on the writ makes the attachment invalid and the officer – A TRESPASSER AB INITIO. *Williams v. Ives,* 25 Conn. 568 (1857); *Chapel High v. Cavallro,* 141 Conn. 407 (1954).

The exercise of the Connecticut Supreme Court denying Petitioner/owner a day in court, a hearing in damages for one (1) dollar compensation, forcing the owner to subsidize the operations with lien-holders on the land records transmogrifying *Simmons v. Wetherall* #163875 tort action into a *Department of Transportation v. Wetherall* #163875 eminent domain action, on the land records was an arbitrary, conscience shocking, oppressive, eminent domain action in violation of the due process clause of the Fourteenth Amendment. See *Kaluczky v. City of White Plains,* 57 F.3d 202, 211 (2d Cir. 1995) (quoting *Lawrence v. Achtyl,* 20 F.3d 529, 537 [2d Cir. 1994]).

"Substantive due process standards are violated only by conduct that is so outrageously arbitrary as to constitute a gross abuse of governmental authority." *Natale v. Town of Ridgefield,* 170 F.3d 258, 263.

In determining whether a private right of action is implicit under regulations promulgated (49 C.F.R. Part 24) pursuant to Title III (42 U.S.C. §§ 4651-4655), and, 49 U.S.C. § 44502 wherein the F.A.A. was acting pursuant to and under a 1955 grant agreement #9-06-009-5078,

wherein petitioner/owner was a third party beneficiary, the relevant factors to be considered by the court is,

> *FIRST,* Does the statute create a federal right in favor of the plaintiff.
>
> *SECOND,* Is there any indication of legislative (congressional) intent, explicit or implicit, either to create such a remedy or to deny one.
>
> *THIRD,* Is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff.
>
> *FOURTH,* Is the cause of action one traditionally relegated to state law, so that it would be inappropriate to infer a cause of action based solely on federal law.

LACK OF JURISDICTION BY THE DISTRICT COURT AND 2ND CIRCUIT

Where it is clearly evident the Connecticut Supreme Court was acting without subject matter jurisdiction – or the parties; without any record before the Superior Court below and this information was put before District Court Judge Cabranes by "affidavit" in civil H-81-778 (*Simmons v. Parizek*) in Hartford on February 4, 1982, in addition to the U.S. Attorney's office making the statement to the court that the federal agency (F.A.A.) never expended any funds to acquire the subject property, the decrees, decisions, injunctions, closing the federal doors to petitioner were – off-the-mark – and made strictly to shield, shelter, protect, conceal the federal agency from the Fifth Amendment violation regards just compensation. From transcript of February 4, 1982 at page 25 reads:

"Mr. Simmons: So I say I'm here on the exact same issue. Follow the A.A.D.A. you haven't followed it out. Mr. Kelly (Asst. U.S. Atty.): Your Honor, I would comment only that the A.A.D.A. which I understand to be the Airport and Airway Development Act of 1970, that is codified at 49 U.S. Code, Section 1701 et seq., that the A.A.D.A. that Mr. Simmons refers to is a different statute than the one which I have briefed and that it, in fact, does not apply to the facts of this situation.

There was no expenditure of federal funds under the A.A.D.A. to permit the taking on any of the property involved in this case, to my knowledge. Therefore, without seeing the case that Mr. Simmons relies on, I would just submit that the A.A.D.A. as a separate statute concerning airport development does not apply to this action.

Mr. Simmons: Your Honor, I ask that the secretary give me an excerpt to that, because I'd like that statement that he just made – they have not participated in giving any money under the A.A.D.A. as far as Mr. Simmons is concerned. Am I quoting you fairly correct, counsel?

Mr. Kelly: Your Honor, it is my understanding that the land that's in question here, the parcels of land on which there may be certain instrumentation landing system equipment was not obtained by funds provided by F.A.A. under the A.A.D.A. That is my understanding of the situation.

As far as the rest of Mr. Simmons comments in response to my motion to dismiss, I would simply stand on the memorandum as we filed it.

The Court (Cabranes, J.): Fine, thank you very much. I will reserve decision on the motion of the Federal Aviation Administration to dismiss this action.

Excerpt from transcript of February 4, 1982 at P. 31 put the issue squarely before Hon. Cabranes.

Mr. Feingold: (Asst. Atty. Gen.) And that brings me then to the part of the most recent affidavit that was filed this morning with all counsel, hand delivered to the Attorney General's office by Mr. Simmons in support of his claim here.

The Court: You are referring to the document entitled, "Affidavit Conflict of Interest, Conspiracy, Fraud," filed February 4, 1982 at 9:35 a.m.

Mr. Feingold: Right. Yes. The allegations made in this affidavit are very, very serious. They are attacking the practice of law by certain members of the profession who are licensed to practice in the state courts and in the United States Federal courts. It is true that if fraud entered into the consent that Mr. Simmons, on the face of the stipulation, gave, it could vitiate that agreement. It could also vitiate the judgment.

And I neglected to cite to your Honor and I apologize for this omission, but I would now cite the Connecticut case – and for Mr. Simmons benefit, with your Honor's permission, may I hand him a copy of the Connecticut decision that I am now going to cite.

The Court: Please, go ahead.

Mr. Feingold: Mr. Simmons, I omit a copy for the U.S. Attorney, Mr. Kelly, because I think he could find it. We are citing the case of *Kenworthy v. Kenworthy,* in 180 Connecticut 129, released by the Connecticut Supreme Court in March of 1980. It is a per curium opinion. The pertinent parts of this opinion are found on page 131, and with the court's permission, it's quite short, I'll leave out citations, but it's important that I read the statements.

"It is a well-established general rule that even a judgment rendered by the court upon the consent of the parties, which is in the nature of a contract to which the court has given its approval, can subsequently be opened without the assent of the parties if it is shown that the stipulation, and hence the judgment, was obtained by fraud, in the actual absence of consent, or by mutual mistake."

The Court: Thank you.

STATUTES AND CONSTITUTIONAL PROVISIONS

Amendment V, Constitution of the United States " . . . nor shall private property be taken for public use, without just compensation."

Amendment XIV, Constitution of the United States " . . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Under the Uniform Real Property Acquisition Act (P.L. 91-646 (1971), 42 U.S.C. § 4601 et seq. Congress

made very clear the federal agency is accountable under 42 U.S.C. § 4628 that reads: "such acquisition shall for purposes of the Uniform Act, be deemed an acquisition by the federal agency having authority over such program or project."

STATEMENT OF THE CASE

In this four decades old controversy between the federal agency (F.A.A.), the state agency (C.D.O.T.), and the private land owner whose real property became necessary for airport purposes of the "Doolittle clear zone", now referred to as the runway protection zone at the end of the primary runway at Bradley Airport, referenced in the original 1955 agreement (Appendix C), has *never* been addressed or complied with, nor mentioned.

Because the state agency is the party who tried negotiation and failed, tried condemnation twice and failed the courts treated the proceedings as a "taking" by the state when, in reality, the federal agency was exclusively responsible for the permanent navigation structures installed in 1962, the "taking" was the exclusive responsibility of the federal agency, and, the state agency did a gross disservice to the F.A.A. by reverting ownership back to the original owner in 1972, but, continued engaging in leases with Uncle Sam – up to the present date.

Whether the state was successful or unsuccessful did not shift the responsibility away from F.A.A. Past practice has shown that in similar situations, the F.A.A. has interceded with private property owners to negotiate "leases" at several airports throughout the northeast

region, including the small *state-owned* Groton-New London Airport.

Knowingly conspiring to and entering into decades succession of "leases" as illustrated with the 1974 lease (Appendix D) with the trespasser (Connecticut Dept. of Transportation) – not the owner – is, was, and continues as concealed intent to defraud against the owner who, in lieu of receiving compensation from the leases has had to continue to subsidize the servitude against him by paying taxes after reverting; been subjected to intentional, deliberate "economic coercion" to subsidize the servitude with lien-holders against the real property that is a condition normally referred to as a "double whammy" – having to continue paying out in lieu of receiving. (Appendix H)

The fact that the federal agency returned its allocated funds for the project back into its general fund, the fact that the Superior Court of Connecticut returned an unconstitutional "verbal" slush fund back to the state treasury on December 23, 1991 (a condition that pricks the balloon of the claims court reference to a January 4, 1978 judgment) is obvious factual evidence that the Doolittle clear zone has never been acquired.

The attempted fallback on a purported decree of private counsel Ed Rogin and Robert Hirtle, Esq's by her Honor Christine Miller of United States Court of Federal Claims was of no consequence whatsoever where the record is ultra clear the owner spurned the fraudulent verbal offer, refused to tender any deeds and the private counsel had no choice but to *withdraw*. (Appendix E and F).

Due to the extraordinary unconstitutional and procedural activity engaged in by the discharged and withdrawn counsel, no MESNE process was initiated since March 24, 1972. With no notices, no hearings, no docket number, no valuations, no day in court means no free lunch, no *free flying* for F.A.A., and, no basis for *Simmons v. Wetherall*, 180 Conn. 587 (1980) that attempted to shield, shelter, protect, the unconstitutional leases by the (trespassor-lessor) to the (collussory-lessee).

In *Griggs v. Allegheny County,* 369 U.S. 84, 89, 82 S.Ct. 531, 7 L.Ed.2d 585 (1962), the Supreme Court found that the local government operator of an airport had "taken" an overflight easement from the plaintiff for which compensation must be paid. Proof of permanent structures for a public purpose by the federal agency (F.A.A.) with exclusive jurisdiction over the Doolittle clear zone is not hypothesizing, but, the actual fact that plaintiff/owner is submitting to the Supreme Court for certiorari.

REASONS FOR GRANTING WRIT

Fifth Amendment

1. Fifth Amendment – provides that private property shall not be taken for public use without "just compensation" "and 'just compensation' means the full monetary equivalent of the property taken. The owner is to be put in the same position monetarily as he would have occupied if his property had not been taken." *United States v. Reynolds,* 397 U.S. 14, 16, 90 S.Ct. 803, 805, 25 L.Ed.2d 12. See also *United States v. Miller*, 317 U.S. 369, 373, 63 S.Ct. 276, 279, 87 L.Ed. 336.

2. "The constitutional requirement of just compensation derives as much content from the basic equitable principles of fairness, *United States v. Commodities Trading Corp.*, 339 U.S. 121, 124, 70 S.Ct. 547, 549, 94 L.Ed. 707 (1950), as it does from technical concepts of property law." *United States v. Fuller,* 409 U.S. at 490, 93 S.Ct. at 803.

3. In case at bar, the Government Navigation Project required the acquisition of the fee and where the state had made condemnation attempts twice, unsuccessfully, the government must pay from date of taking.

4. That the United States has taken possession in 1962 of an area of 5.97 acres designated as parcel "C" on a map of town of East Granby, CT land records at Vol. 12, p. 568 is – indisputable.

5. The United States has *never* tendered any payment to the owner of the land, is indisputable.

6. After title reverted to the owner in 1972 as a result of two (2) null and void condemnations by the state, *no* MESNE process by the United States or the Connecticut Dept. of Transportation has been initiated to acquire title to the subject property, since 3/24/72.

7. The government (F.A.A.) has never filed a declaration of taking to acquire the necessary real property interests declaring that said lands are thereby taken for the use of the United States.

8. The Connecticut Dept. of Transportation, acting as an agent of the United States under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 et seq. attempted to acquire the necessary acreage through a purchase in

December, 1977. On April 19, 1978 after those negotiations had broken down with the owner rejecting the fraudulent "verbal" offer; refused to tender any deeds; the private counsel negotiators who were representing diverse interests simultaneously, withdrew from representation which the courts, both state and federal, should have treated as the final legal chapter for the corrupt (Rogin-Hirtle) law firm.

9. The United States has the authority to take private property for public use by eminent domain, *Kohl v. United States,* 91 U.S. 367, 371, 23 L.Ed. 449, 451 (1876), but is obliged by the Fifth Amendment to provide "just compensation" to the owner thereof. "Just compensation" courts held, means in most cases the fair market value of the property on the date is appropriated. *United States v. 564.54 Acres of Land,* 441 U.S. 506, 511-513, 99 S.Ct. 1854, 1857-1858, 60 L.Ed.2d 435 (1979). "Under this standard, the owner is entitled to received 'what a willing buyer would pay in cash to a willing seller' at the time of taking." Id. at 511, 99 S.Ct. at 1857 (quoting *United States v. Miller*) 317 U.S. 369, 374, 63 S.Ct. 276, 280, 87 L.Ed. 336 (1943).

When a taking occurs by physical invasion, the usual rule is that the time of the invasion constitutes the act of taking and "[i]t is that event which gives rise to the claim for compensation and fixes the date as of which the land is to be valued . . . " *United States v. Dow,* 357 U.S. 17, 22, 78 S.Ct. 1039, 1044, 22 L.Ed.2d 1109.

If disbursement of the award is delayed, the owner is entitled to interest thereon sufficient to ensure that he is placed in as good a position pecuniarily as he would have

occupied if the payment had coincided with the appropriation. *Phelps v. United States,* 274 U.S. 341, 344, 47 S.Ct. 611, 612, 71 L.Ed. 1083 (1927); *Seaboard Airline R. Co. v. United States,* 261 U.S. 299, 306, 43 S.Ct. 354, 356, 67 L.Ed. 664 (1923).

Federal Question

10. Question of whether property was taken without due process or just compensation constitutes a "federal question" with jurisdictional statute. 28 U.S.C.A. § 1331; U.S.C.A. Const. Amends. 5, 14, § 1.

Mandatory Written Statements

11. Statutes providing that public entity may acquire property by eminent domain only if it first makes offer to property owner and provides him with written statement explaining why offer is just, establishes "mandatory" requirements which must be observed by any public entity planning to initiate eminent domain proceedings through resolution of necessity, *City of San Jose v. Great Oaks Water Company,* 237 Cal. Rptr. 845 (Cal. App. 1 Dist. 1987).

Constitutional Law-Attachments

12. State procedures for creating and enforcing attachments are subject to the strictures of due process, U.S.C.A. Const. Amend. 14.

Citing *Connecticut v. Doerr,* 501 U.S. 1, 115 L.Ed.2d 1, 111 S.Ct. 2105 (1991) at 2118 reads: the law concerning attachments has rarely, if ever, required defendants to suffer an encumbered title until the case is concluded

without any prior opportunity to show that the attachment was unwarranted. Our cases have repeatedly emphasized the importance of providing a prompt postdeprivation hearing at the very least. *Mitchell,* 416 U.S. at 606, 94 S.Ct. at 1899; *Di-Chem,* 419 U.S. at 606-607, 95 S.Ct. at 722-723. Every state but one, moreover, expressly requires a preattachment or postattachment hearing to determine the propriety of an attachment.

Invalid Attachment

13. Attachment was held invalid where the court's attention was directed to the fact that the certificate of attachment failed to state the name of the owner of the property sought to be attached, as in case at bar.

Harwood v. U.S. Shipping Board E.F. Corp., 300 F. 433 (District Court, D. Connecticut March 22, 1924 – No. 1669).

Hearings

14. The opportunity to be heard at a meaningful time and in a meaningful manner is constitutionally required to meet currently accepted standards of procedural due process in the area of property rights. *Kukanskis v. Griffith,* 180 Conn. 501, See e.g. *Fuentes v. Shevin,* 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972), rehearing denied, 409 U.S. 902, 93 S.Ct. 177, 342 L.Ed.2d 165 (1972); *Lynch v. Household Fin. Corp.,* 405 U.S. 538, 92 S.Ct. 1611, 31 L.Ed.2d 424, rehearing denied, 406 U.S. 911, 92 S.Ct. 1611, 31 L.Ed.2d 822 (1972); *Sniadich v. Family Fin. Corp.* 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969); *Mitchell v. W.T. Grant Co.,* 416 U.S. 600, 94 S.Ct. 1895, 40 L.Ed.2d 406 (1974); *North Georgia Finishing, Inc. v.*

Di-Chem, Inc., 419 U.S. 601, 95 S.Ct. 719, 42 L.Ed.2d 751 (1975).

For more than a century the central meaning of procedural due process has been clear; "parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *Baldwin v. Hale,* 1 Wall 223, 233. See *Windsor v. McVeigh,* 93 U.S. 274; *Harvey v. Elliot,* 167 U.S. 409; *Grannis v. Ordean,* 234 U.S. 385. It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo,* 380 U.S. 545-552.

Citing *Connecticut v. Doerr,* 111 S.Ct. 2105 (1991) at 2118: our cases have repeatedly emphasized the importance of providing a prompt post-deprivation hearing at the very least. See also *Matthews v. Eldridge,* 424 U.S. 319, 343, 344, 96 S.Ct. 893, 907, 47 L.Ed.2d 18 (1976).

Where the legislative mandate for damages (*Simmons v. Wetherall,* #163875) was docketed on January 2, 1970, the fifteen days scheduled by the Superior Court and referee Shapiro for hearings were "*axed*" by Rogin-Hirtle, Esq's in December 1977, the Supreme Court of Connecticut in May, 2000 closed the doors to any possible hearings with an order that no further proceedings (appointment of referees) were to be submitted to that court, answers, to a large degree why this eminent domain matter has exceptionally long whiskers. (Appendix J).

Trespassing – Intent to Defraud

15. No fraud is more odious than an attempt to subvert the administration of justice, so odious that the

unconstitutional "slush fund" submitted to the Superior Court, – *after* discharge, withdrawal, and denial of deeds was returned to the treasury on December 23, 1991 (Appendix G) with "no deeds," "no MESNE process," "no hearings," "no assessment of damages," "no written statements of compensation" to show for the bad faith, malicious, unconstitutional attempted seizure of real property with the unconstitutional attachments on the public land records on June 2nd and 5th of 1978 by withdrawn private counsel (Rogin-Hirtle, Esq's), the purpose of which was a self-serving scheme to "Pilfer" in excess of $113,000.00 from the rejected verbal offer on 9/25/80, in total disregard of several senior lien-holders who were never notified or served notice or paid and per C.G.S. § 48-21 must be cleared off the land records – before – the owner can claim any "legal" compensation.

Navigational Servitude

16. The servitude in order to safeguard the federal government's paramount control of air traffic used in interstate commerce, limits the power of the states to create conflicting interests based on local law.

Neither Connecticut, nor any other state, is at liberty through local law to control the navigational servitude which congress, in light of its extensive Commerce Clause Authority over the nations airspace has prescribed rules governing – "the taking" – of petitioner's private property to assure the public a free right of access to the airspace.

The navigational servitude is an expression of the notion that the determination whether a taking has occurred must take into consideration the important

public interest in the control of navigable airspace capable of supporting public navigation.

STATUTE OF FRAUDS

An oral contract for the purchase of land is unenforceable under the Statute of Frauds. The wisdom of the Statute is a matter within the control of the legislature, not the judiciary. The Statute of Frauds was enacted to prevent fraud, not to aid it, and should receive a reasonable interpretation with that end in view by the Connecticut Supreme Court.

A court of equity will not release an individual from the operation of the Statute of Frauds, which requires that interest in lands be created by an instrument in writing, and impose an equitable lien upon land in favor of one who makes improvements thereon, knowing that the title is in another, will leave the party to the remedies, if any, which a court of law provides, *Washington Market Co. v. District of Columbia,* 172 U.S. 361, 43 L.Ed. 478, 19 S.Ct. 218.

The Statute of Frauds, in providing that no civil action shall be maintained on an agreement for the sale of real estate unless such agreement is in writing and signed by the party to be charged, does not make void the contract to which the limitation applies but affects only the remedy, *Wolfe v. Wallingford Bank & Trust Co.,* 124 Conn. 507, 1 A.2d 246, 117 ALR 932.

The Statute of Frauds is not intended to change, and is not to be construed as changing, the general principle of the law of contracts which require a consideration to render a contract enforceable. The object and result of the

statute are merely to add an additional requirement, namely, that the contract or memorandum thereof be in writing; and is supported by consideration.

Where in the case at bar there was [no] consideration, none whatsoever, and the Supreme Court of Connecticut has continually, for decades, impaired, obstructed, defeated, closed the doors in May, 2000 to every attempt by the owner to have referees assigned to Docket #163875 to determine consideration, guaranteed by the Fifth and Fourteenth Amendments, this declaration warrants constitutional compliance in – several – unconstitutional airport and highway encroachments against petitioner.

In *Smith v. Tramel,* 68 Iowa, 488, 27 N.W. 471, 472 the court said: "an oral promise to pay the debt of another cannot constitute an estoppel. If it could, all the mischief would be let in at once which the Statute of Frauds was designed to prevent."

And in the case of *Regan v. Kirk,* 140 Iowa, 302, 118 N.W. 317, 318 which was an action on a contract within the Statute of Frauds, wherein the lower court attempted to submit to the jury the question of an implied contract the court said: "This was clearly erroneous. The fact that the promisee relies on an unenforceable promise does not validate it. The contract itself must be such as is enforceable upon performance, evidence of an oral agreement to 'answer the debt of another' is inadmissible under the statute, regardless of whether it is acted on or not."

A DAY IN COURT

In order to determine the validity-or-invalidity of the decrees of the judiciary of the Superior Court relative to a claimed [judgment] of discharged and withdrawn – and corrupt (Rogin-Hirtle, Esq's) one must refer to Chapter 17, judgments in Practice Book, more specifically sections 17-11, 17-12, and 17-13 relative to defendant's offer, and, to sections 17-14 offer of judgment, how made; 17-15 acceptance of plaintiff's offer; 17-16 plaintiff's offer not accepted; 17-17 offer of judgment and acceptance included in record. [P.B. numbers in 1977/78 were 346, 347, 348].

A court cannot accept a stipulated judgment where it lacks subject matter jurisdiction or where the stipulation violates public policy – or – a verbal offer, and, certainly under no circumstances should the case be decided without an opportunity for each party to present evidence. *Liberty Bank for Savings v. Armstrong,* (1980) 36 Conn. Supp. 629, 423 A.2d 171. Quoting from *Liberty Bank*, supra, at p. 631 a judgment by stipulation is not a judicial determination of any litigated right but a contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction. *Bryan v. Reynolds,* 143 Conn. 456, 460, 123 A.2d 192 (1956).

Where there *is not, was not, could not* be any submissions to the court of competent jurisdiction of the corrupt practices engaged in by discharged and withdrawn counsel (Rogin-Hirtle, Esq's), the oral (verbal) offer did not comport with the Statute of Frauds, and, the owner never accepted, assigned, used or took any of the fraudulent offer, refused to tender any deeds, and the total and complete abstinence from permitting any hearings in damages in defiance of the legislative mandate (Special

Act #170 (1969)); in defiance of the congressional mandate (C.G.S. § 48-17a, b, c) (1971) made it obvious the intent was "to defraud" and against public policy.

That there is [no record] before the superior court; that the Supreme Court of Connecticut acted arbitrarily; the fact of no record was submitted to Hon. John Daly in 1979 and no compensation can be paid without proceedings (MESNE process) before the court and chief clerk Lucian Jachamovitz submitted the citation of *Shelton v. Wolthausen,* 80 Conn. 599 to Hon. Daly who denied payment from the unconstitutional, fraudulent "slush fund" to discharged (Rogin-Hirtle, Esq's), and, therein lies the impasse. End of ball game.

The Superior Court is the court of original jurisdiction.

Where there was no action founded, initiated, or brought to the trial court, the denial of a day in court that is so basic and fundamental to real property acquisition, after decades of "bumbling," mandates reversal under the general jurisprudence of Connecticut practice as found in the cite of *Russo v. Watertown,* 184 Conn. 30, 33-34, 441 A.2d 56 at 58 (1981) stating: "[i]t is in recognition and implementation of the basic principle that due process of law requires that the rights of no man shall be judicially determined without affording him a day in court and an opportunity to be heard." *Benz v. Walker,* 154 Conn. 74, 77, 221 A.2d 841 (1966)[1]

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[1] We have stated: "'It is the settled rule of this jurisdiction, if indeed it may not be safely called an established general jurisprudence

(Continued on following page)

Since the record does not indicate that all persons having a legitimate interest in the subject matter are parties to the action or were given reasonable notice thereof, the trial court (Supreme Court) was without jurisdiction. (Emphasis added) *Wenzel v. Danbury,* 152 Conn. 675, 211 A.2d 683 (1965). (Appendix K).

CONCLUSION

The pertinent words of the Fifth Amendment of the Constitution of the United States are the familiar ones: "nor shall private property be taken for public use, without compensation." That prohibition, of course, applies against the States through the Fourteenth Amendment. *Chicago, B. & O. R. Co. v. Chicago*, 166 U.S. 226, 239 (1897); *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 122 (1978).

Where the exaction in violation of due process was a "TAKING" by the federal agency, not the state agency, it was obviously uncompensated – within the Amendments proscription, is analogous to the appropriation of the use of

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that no court will proceed to the adjudication of a matter involving conflicting rights and interests until all persons directly concerned in the event have been actually or constructively notified of the pendency of the proceeding, and given reasonable opportunity to appear and be heard, this firmly fixed limitation, which, in effect if not technically in all cases is a jurisdictional one, is as binding in English practice as it is with us.'" *Manafort Bros. v. Kerrigan,* 154 Conn. 112, 114, 222 A.2d 218 (1966); *Corsino v. Grover,* 148 Conn. 299, 309, 170 A.2d 267 (1961); *Ackerman v. Union & New Haven Trust Co.,* 91 Conn. 500, 508, 100 A.22 (1917).

private property in *United States v. Causby*, 328 U.S. 256 (1946).

The fact that the state courts reverted ownership and title back to the original owner on the town of East Granby, CT land records at Vol. 52, p. 242-243 on March 24, 1972 is – indisputable.

The fact that state mandated (Special Act #170 (1969)) and congressional mandate (CGS § 48-17a, b, c, (1971)) as a result of P.L. 91-646 (1971) does not merely provide a remedy but creates a vested property right; the total and complete disregard for such legislation as to affect rights actually obtained thereunder is a deprivation of property without due process of law as guaranteed by the Fifth and Fourteenth Amendments.

Where the right to 15 years of such compensation having accrued from 1962-1977, when the state and federal legislation was in force – cannot be destroyed, disregarded, defeated impaired, obstructed by private counsel negotiators in concert with the state supreme court, giving retrospective effect with the rejected fraudulent verbal offer, a violation of the rights guaranteed by the Fifth and Fourteenth Amendments, and, after 40 years, close the state and federal doors to petitioner to – "raise the federal question."

Matters which belong, and, provided to the remedy by the contract (Grant Agreement #9-06-009-5078 (1955)) cannot impair or deprive one of a vested property right. The federal obligation under the above contract, based on 1955 values was 50% of allowable project cost and a maximum obligation of $37,000.00. Current obligations under § 47109 are 90%.

The right to just compensation was, is, and continues as a vested property right. In regard to a clear zone easement through condemnation in county court at law, Judge Wisdom said in *United States v. Brondum,* 272 F.2d at p. 646 – "the United States government has complete discretion in determining whether to take a clearance easement or to take an avigation easement." The same rule applies here.

Where the "federal question" was raised in a federal court action (*Simmons v. Wetherall, et al.* #14806) and the decision of Hon. Blumenfeld was appealed to the 2nd Circuit Court of Appeals, docket #72-1541 and the appeals court, remanded, relative to the land on which airport navigational instrumentation was located and the appeals court terminology stated if the – state had fenced it off without paying him due compensation or instituting court proceedings, it would seem that a deprivation of appellant's right to "enjoy" the use of his land is stated. See *Lynch*, 405 U.S. at 544, S.Ct. 1113. (472 F.2d 509).

The malicious, bad-faith coercion by Rogin-Hirtle, Esq. on December 12, 1977, before filing an appearance on 12/13/77, made the coerced fraudulent claim to the owner that – no offer could be made until two (2) federal court actions are withdrawn, with prejudice, was arbitrary intent to defraud, was countered with a hand-delivered discharge on December 23, 1977, ending all authority, right, jurisdiction as of 12/23/77, ending a devious scheme to avoid paying compensation from date of taking – by F.A.A.; illuminating the reason's why the offer was verbal.

Discharged counsel cannot render any valid judgments for the "doolittle clear zone" without subject matter jurisdiction-or-the parties. *Broca v. Broca,* 181 Conn. 463,

468, 435 A.2d 1016 (1980); *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat) 304, 364 (1916).

Cannot render any valid judgments until service is made on all interested and necessary parties, since it is service of process, not the attachment which tolls the statute. *Young v. Margiotta,* 136 Conn. 429, 433, 71 A.2d 924 (1950).

Cannot render any valid judgments where process must be served the requisite number of days before return day, *Brandriff v. Sellas,* 40 Conn. Supp. 243 (1985).

Cannot render any valid judgments where an improper return day (first Tuesday of July 1978) affects the court's jurisdiction. *Hartford National Bank & Trust v. Tucker,* 178 Conn. 472, 423 A.2d 141 (1979) cert. denied 445 U.S. 904, 100 S.Ct. 1079, 63 L.Ed.2d 319 (1980).

Cannot render any valid judgments binding the property of petitioner unless a means reasonably calculated to give notice to the parties has been employed. *Mullane v. Central Hanover B. & T. Co.,* 339 U.S. 306, 94 L.Ed 865, 70 S.Ct. 652 (1950).

Cannot render a valid judgment where compliance with the statutes under Connecticut law is not to be – "disregarded with impunity, nor waived or changed by the courts." *Carter v. Carter,* 147 Conn. 238, 242, 159 A.2d 173 (1960).

Cannot render a valid judgment where, after discharge and withdrawal, had no authority, right, jurisdiction to act [in any capacity], the owner was intentionally, maliciously, with deliberate malevolence, "excluded" from the transmogrified citation on the land records at Vol. 59, p. 661-662.

The United States Court of Federal Claims and the United States Court of Federal Appeals cannot seek or find protection behind a decree that was never submitted to the court of competent jurisdiction (Superior), where the discharged counsel withdrew rather than attempt specific performance against the owner, and the transcript of proceedings of June 7, 1982 before Hon. DuPont, wherein the state (Atty. Gen's office) challenged the Superior Court with lack of jurisdiction of the subject matter – and the parties, denying compensation to lien-holders was made a matter of record with the Federal Claims Appeal Court, such factual presentation – mandates – the federal agency negotiate bargain, arrange, comply with "leases" from the owner – not the trespasser.

Respectfully submitted,

AUGUSTUS J. SIMMONS,
Petitioner Pro Se
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

APPENDIX

INDEX TO APPENDIX

Page

A. DECISION OF UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT ..... App. 1

B. ORDER OF THE UNITED STATES COURT OF FEDERAL CLAIMS ..... App. 4

C. GRANT AGREEMENT #9-06-009-5078 (1955) ... App. 12

D. LEASE FROM CONNECTICUT DEPT. OF TRANSPORTATION TO FEDERAL AVIATION ADMINISTRATION (1974) ..... App. 18

E. DENIAL OF DEEDS (4-19-1978) ..... App. 29

F. WITHDRAWAL OF PRIVATE NEGOTIATORS ED ROGIN – ROBERT HIRTLE, ESQ'S (4-19-1978) ..... App. 32

G. RETURN OF UNCONSTITUTIONAL FUNDS TO STATE TREASURY (12-23-1991) ..... App. 34

H. FAA LETTER – NON PARTICIPATION ..... App. 36

I. ORIGINAL COMPLAINT ..... App. 41

J. CONN. SUPREME COURT ORDER RE #163875 ..... App. 54

K. REFEREE LETTER – NO NOTICES (7-18-1980) ..... App. 55

APPENDIX A

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. This disposition will appear in tables published periodically.

United States Court of Appeals
for the Federal Circuit

02-5163

AUGUSTUS J. SIMMONS,

Plaintiff-Movant,

v.

UNITED STATES,

Defendant-Appellee,

and

JAMES F. BYRNES, JR.,
Commissioner Connecticut Department of Transportation,

Respondent-Appellee.

DECIDED: January 10, 2003

Before RADER, BRYSON, and DYK, *Circuit Judges.*

PER CURIAM

August J. Simmons seeks review of the judgment of the United States Court of Federal Claims, *Simmons v. United States*, 53 Fed. Cl. 131 (2002), dismissing his claims as barred by the statute of limitations and the doctrine of res judicata. We *affirm*.

BACKGROUND

The Federal Aviation Administration (FAA), through the State of Connecticut attempted to condemn real property owned by Simmons in 1962. Following a lengthy court battle in the state courts of Connecticut, judgment was entered on January 4, 1978, pursuant to a stipulation of the parties. The stipulation provided "that the State of Connecticut take title to plaintiff's land in exchange for approximately $ 385,000.00." *Simmons*, 53 Fed. Cl. at 132. Simmons thereafter filed a number of lawsuits in federal court seeking to vacate the judgment. These lawsuits culminated in a March 15, 1988, decision of the United States District Court for the District of Connecticut enjoining Simmons "from filing in the United States District Court for the District of Connecticut or any other federal court any lawsuit in which he asserts the same claims as were litigated, or as might have been litigated, in the Connecticut Superior Court cases. . . . " *Simmons v. Burns*, No. H-87-732, slip op. at 15 (D. Conn. Mar. 15, 1988).

Simmons subsequently filed the present suit in the Court of Federal Claims alleging with respect to the condemnation: breach of contract; violation of due process; and a taking of property without just compensation. The government filed a motion to dismiss, which the court granted pursuant to 28 U.S.C. § 2501, finding that the action was barred because it was filed beyond the six-year statute of limitations period and by the doctrine of res judicata in light of the 1978 judgment.

DISCUSSION

We review the Court of Federal Claims' decision granting the government's motion to dismiss without deference. *O'Connor v. United States*, 308 F.3d 1233, 1239 (Fed. Cir. 2002). Here Simmons has presented no argument for how this suit, filed decades after the claim first accrued, meets the six-year statute of limitations requirement of 28 U.S.C. § 2501. The dismissal as time barred, therefore, is affirmed.

The Court of Federal Claims also properly found that the suit was barred by res judicata. Barring this type of frivolous re-litigation is precisely the purpose of "res judicata . . . [which] relieve[s] parties of the cost and vexation of multiple lawsuits, conserve[s] judicial resources, and, by preventing inconsistent decisions, encourage[s] reliance on adjudication." *Allen v. McCurry*, 449 U.S. 90, 94 (1990). For this additional reason, the dismissal is affirmed.

Contrary to the decision of the Court of Federal Claims, *Simmons*, 53 Fed. Cl. at 134, ("dismiss[ing] the complaint without prejudice"), the dismissal of Simmons' complaint was a dismissal on the merits and thus operates as a dismissal *with* prejudice.

The United States is directed to advise the United States District Court for the District of Connecticut of Simmons' apparent violation of the court's injunction entered on March 15, 1988, by Simmons' filing of the present suit.

For the foregoing reasons, the decision of the Court of Federal Claims is affirmed.

APPENDIX B

In the United States Court of Federal Claims

No. 02-301L
(Filed August 1, 2002)

**********	*	
AUGUSTUS J. SIMMONS, *pro se*,	*	Takings; motion to dismiss; statute of limitations; *res judicata*; injunction against filing actions in federal court; motion to amend.
Plaintiff,	*	
v.	*	
THE UNITED STATES,	*	
Defendant.	*	
**********	*	

Augustus J. Simmons, Windsor, CT, *pro se*.

Barry A. Weiner, Washington, DC, with whom was *Assistant Attorney General Thomas L. Sansonetti*, for defendant. *Frank San Martin*, Federal Aviation Administration, Washington, DC, of counsel.

Assistant Attorney General Paul K. Pernerewski, Hartford, CT, for Commissioner James F. Byrnes, Jr., Connecticut Department of Transportation.

ORDER

MILLER, Judge.

This case is before the court on defendant's motion to dismiss plaintiff's various claims related to the Federal Aviation Administration's 1962 condemnation of plaintiff's real property located adjacent to Bradley International Airport in Connecticut. At issue is whether plaintiff's

claims are barred by the statute of limitations or by the doctrine of *res judicata*. Argument is deemed unnecessary.

FACTS

On July 1, 1962, the Federal Aviation Administration (the "FAA"), through the State of Connecticut, attempted to condemn plaintiff's property located in East Granby, Connecticut, for the purpose of expanding what is now the Bradley International Airport. Plaintiff filed multiple actions, eventually consolidated by the Connecticut Supreme Court, all challenging the legality of the occupation of plaintiff's land and the state's attempt to gain title to the property. Pursuant to a stipulation by the parties, judgment entered on January 4, 1978, providing that the State of Connecticut take title to plaintiff's land in exchange for approximately $385,000.00.

Shortly thereafter, plaintiff unsuccessfully attempted to vacate the judgment. Over the next decade, he proceeded to file a number of lawsuits, again alleging the illegal occupation of his land, on various theories including a taking in violation of the United States Constitution, state law trespass and ejectment, and various federal statutes. All of these cases were dismissed on principles of *res judicata* and collateral estoppel.

On March 15, 1988, the Hon. José A. Cabranes, United States District Judge, United States District Court for the District of Connecticut, sought to "put an end to plaintiff's vendetta and relieve its victims from the burden of vexatious relitigation of these issues." *Simmons v. Burns*, No. H-87-732 (JAC), slip. op. at 13 (D. Conn. Mar. 15, 1988). He entered an injunction enjoining plaintiff from filing in any federal court any state or federal claim

predicated upon the condemnation of plaintiff's land in East Granby, Connecticut. *Id.* at 15.

Unchastened by either past defeats or the injunction, plaintiff now sues in the United States Court of Federal Claims, alleging in a three-count complaint that the condemnation of his property in East Granby constituted (1) a breach of contract; (2) an illegal exaction in violation of due process; and (3) a taking of property without just compensation. By separate motion, plaintiff seeks leave to amend the complaint, predicating jurisdiction on 28 U.S.C. § 1331 (2000), to include a pendant claim against James F. Byrnes, Jr., Commissioner, Connecticut Department of Transportation. Both defendant and the putative state defendant move to dismiss under RCFC 12(b)(1) on the ground that the statute of limitations bars plaintiff's claims or, alternatively, under RCFC 12(b)(6) on the ground that the claims are barred by the doctrines of *res judicata* and collateral estoppel.*

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* Inexplicably, neither defendant nor Commissioner Byrnes moves to enforce Judge Cabranes's injunction, instead invoking the statute of limitations and the doctrine of *res judicata*. They thereby do a disservice to themselves. Because the statute of limitations is jurisdictional, the court first must address that issue. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 95 (1998). However, enforcing the injunction would bar plaintiff's claims on the merits, whereas a dismissal under the statute of limitations operates as a dismissal without prejudice, *see* RCFC 41(b); *Indium Corp. of Amer. v. Semi-Alloys, Inc.*, 781 F.2d 879, 881 (Fed. Cir. 1985).

Defendant does rely on Judge Cabranes's order as a ground for barring the claims on the merits. Had defendant moved to enforce the judgment the only determination required would have been whether the terms of the injunction were applicable to plaintiff and his claims, and an order could have entered barring plaintiff's claims on the merits. Needless to say, defendant would have been spared briefing the

(Continued on following page)

DISCUSSION

1. Standards

Whether a court possesses subject matter jurisdiction over a claim depends upon the "court's general power to adjudicate in specific areas of substantive law." *Palmer v. United States*, 168 F.3d 1310, 1313 (Fed. Cir. 1999). A motion to dismiss under RCFC 12(b)(1) may challenge the sufficiency of the jurisdictional allegations in the complaint. When a federal court hears such a facial challenge, "its task is necessarily a limited one." *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Id.* The burden of proving that the Court of Federal Claims has subject matter jurisdiction over a claim rests with the party seeking to invoke its jurisdiction. *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936); *Trauma Servs. Group v. United States*, 104 F.3d 1321, 1324 (Fed. Cir. 1997). The court is mindful that complaints filed by *pro se* plaintiffs are held "to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curium). Nevertheless, the leniency afforded *pro se* litigants with respect to mere formalities does not relieve them of jurisdictional requirements. *Kelley v. Sec., United States Dep't of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987).

"torturous" history of the case of which it complains. Def.'s Br. filed June 10, 2002, at 4.

2. Statute of Limitations

Civil actions brought against the United States in the Court of Federal Claims must be filed within six years of accrual. 28 U.S.C. § 2501 (2000). Because the limitations period is an express condition of the Government's consent to be sued, the court lacks power to toll the running of the statute of limitations on equitable grounds. *Hart v. United States*, 910 F.2d 815, 818-19 (Fed. Cir. 1990). A cause of action accrues when all of the events necessary to fix the alleged liability of the Government have occurred and the claimant legally is entitled to bring suit. *Catawba Indian Tribe of So. Carolina v. United States*, 982 F.2d 1564, 1570 (Fed. Cir. 1993); *Hopland Band of Pomo Indians v. United States*, 855 F.2d 1573, 1577 (Fed. Cir. 1988). Ignorance of all the facts does not alone suffice to toll the statute of limitations. Plaintiff need only be aware of sufficient facts to know a wrong occurred. *Japanese War Notes Claimants Assoc. v. United States*, 178 Ct. Cl. 630, 634, 373 F.2d 356, 359 (1967). It is not necessary that plaintiff be fully appraised of the merits of the claim or the extent of damages before filing suit. *Boling v. United States*, 220 F.3d 1365, 1371 (Fed. Cir. 2000) (rejecting proposition that filing of lawsuit can be postponed until full extent of damages is known); *Catawba*, 982 F.2d at 1572 (holding that misunderstanding as to meaning of law does not toll accrual of cause of action when all relevant facts are known).

According to his complaint, the physical invasion of plaintiff's property occurred approximately 40 years ago, on July 1, 1962. In his opposition brief, plaintiff offers only 1) the astonishing proposition that the filing of a lawsuit will stop the running of the period of time necessary for a party to perfect title through prescriptive easement or

adverse possession; 2) the argument that attachment of his land was rendered invalid because the original summons issued by the Connecticut Attorney General named plaintiff's property, but failed to name plaintiff as the owner of that property; and 3) the fact that plaintiff also attempted to dissolve certain attachments to the property in 1996. These averments do not establish that plaintiff's claims accrued within the six years prior to filing, *i.e.*, after April 10, 1996. The court has reviewed the complaint and cannot find one single allegation of conduct or fact not known to plaintiff before the accrual date. Defendant's motion to dismiss plaintiff's claims as barred by the statute of limitations therefore is granted.

3. *Res judicata*

Were jurisdiction present to consider plaintiff's claims, they would be barred by operation of the doctrine of *res judicata*. Under the doctrine of claim preclusion, or *res judicata*, "a final judgment on the merits of an action precludes the parties . . . from relitigating issues that were or could have been raised in that action." *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981). Claim preclusion attaches when (1) the court's prior decision is a valid and final judgment; (2) the suit before the court involves the same claim or cause of action as in the prior decision; (3) the prior decision was on the merits of the case; and (4) the same parties are involved in both cases. *Americo Mosca v. United States*, 224 Ct. Cl. 678, 679 (1980). The Supreme Court has attached significant importance to assuring the nonmovant has had a "full and fair opportunity to litigate" the claim below. *See Poyner v. Murray*, 508 U.S. 931 (1993). The court has examined the filings to this end.

In 1978, pursuant to a settlement, judgment was entered regarding plaintiff's claim concerning the condemnation of the subject property. A judgment entered into by agreement or consent is a valid and final judgment. *Conn. Pharmaceutical Ass'n v. Milano*, 191 Conn. 555, 558 (1983). The Supreme Court of Connecticut already has found that this agreement was valid and on the merits. *See Simmons v. Wetherall*, 180 Conn. 587, 588 (1980). Indeed, Judge Cabranes already has characterized plaintiff's federal lawsuits as improper collateral attacks on a valid state court judgment and, for this reason, imposed an injunction on plaintiff against further litigation of this matter. In addition to Judge Cabranes, other state and federal trial and appellate courts already have determined that plaintiff has had more than a full and fair opportunity to litigate his property claims and that merely changing the legal theory of the case or the name of the defendant does not provide any justification to reopen the 1978 settlement. Dismissal on *res judicata* grounds therefore is appropriate.

CONCLUSION

Accordingly, based on the foregoing,

IT IS ORDERED, as follows:

1. Defendant's motion to dismiss under RCFC 12(b)(1) is granted, and the Clerk of the Court shall dismiss the complaint without prejudice for lack of jurisdiction.

2. Plaintiff's Motion for Leave of Court To Amend Jurisdiction with the Addition of 28 U.S.C. § 1331 is denied as futile. *See Mitsui Foods v. United States*, 867

F.2d 1401, 1403-04 (Fed. Cir. 1989) (futility of amendment may justify denial of motion for leave to amend).

3. Because plaintiff has abused the process of the court by filing a complaint with no legitimate basis for jurisdiction on a claim that has been adjudicated previously, defendant is directed to make no response to any paper filed in the Court of Federal Claims by this plaintiff under any docket number or caption unless ordered to do so by the court. Defendant will not be defaulted in any case in which it complies with this order. The court will advise defendant if an answer or other pleading is required; absent such advice, the prescribed times within which defendant would be required to answer or otherwise plead are suspended indefinitely. *See Sterner v. United States,* 2 Cl. Ct. 253, 255 (1983).

/s/ Christine O.C. Miller
Christine Odell Cook Miller
Judge

APPENDIX C

DEPARTMENT OF COMMERCE
CIVIL AERONAUTICS ADMINISTRATION
WASHINGTON 25

GRANT AGREEMENT

Part I – Offer

CONTRACT NO. CICA 36-A

Date of Offer
January 12, 1955
Bradley Field Airport

Project No.
09-06-009-507

TO: STATE OF CONNECTICUT
(herein referred to as the "Sponsor")

FROM: The United States of America (acting through the Administrator of Civil Aeronautics, herein referred to as the "Administrator")

WHEREAS, the Sponsor has submitted to the Administrator a Project Application dated December 2, 1954 for a grant of Federal funds for a project for development of the Bradley Field Airport (herein called the "Airport") together with plans and specifications for such project, which Project Application, as approved by the administrator, is hereby incorporated herein and made a part hereof; and

WHEREAS, the Administrator has approved a project for development of the Airport (herein called the "Project") consisting of the following described airport development:

> "Acquisition of land for 'Doolittle' clear zones both ends Runway 6-24; acquisition of land and navigation easements for protection of approaches 6-24, 19, 33".

all as more particularly described in the property map and plans and specifications incorporated in the said Project Application;

NOW THEREFORE, pursuant to and for the purposes of carrying out the provisions of the Federal Airport Act (60 Stat. 170; Pub. Law 377, 79th Congress), and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in said Project Application, and its acceptance of this Offer, as hereinafter provided, and (b) the benefits to accrue to the United Stats and the public from the accomplishment of the Project and the operation and maintenance of the Airport, as herein provided.

THE ADMINISTRATOR, FOR AND ON BEHALF OF THE UNITED STATES HEREBY OFFERS AND AGREES to pay, as the United States' share of the cost in accomplishing the project, 50 percent of all allowable project costs subject to the following terms and conditions:

1. The maximum obligation of the United States payable under this Offer shall be $37,000.00

2. The Sponsor shall

   (a) begin accomplishment of the Project within a reasonable time after acceptance of this Offer, and

   (b) carry out and complete the Project in accordance with the terms of this Offer, and the Federal Airport Act and the Regulations promulgated thereunder by the Administrator in effect on the date of this Offer, which Act and Regulations

are incorporated herein and made a part hereof, and

(c) carry out and complete the Project in accordance with the plans and specifications and property map incorporated herein as they may be revised or modified with the approval of the Administrator or his duly authorized representatives.

3. The Sponsor shall operate and maintain the Airport as provided in the Project Application incorporated herein.

4. The maximum amounts of building space which the Sponsor shall be obligated to furnish civil agencies of the United States for the purposes and on the terms and conditions states in Paragraph 9 of Part III of the Project Application dated May 18, 1949, for Project No. 9-06-009-906-009-801 shall be as set forth in the attached schedule of maximum space requirements which is incorporated herein and made a part hereof.

5. Any misrepresentation or omission of a material fact by the Sponsor concerning the Project or the Sponsor's authority or ability to carry out the obligations assumed by the Sponsor in accepting this Offer shall terminate the obligation of the United States, and it is understood and agreed by the sponsor in accepting this Offer that if a material fact has been misrepresented or omitted by the Sponsor, the Administrator on behalf of the United States may recover all grant payments made.

6. The Administrator reserves the right to amend or withdraw this Offer at any time prior to its acceptance by the Sponsor.

7. This Offer shall expire and the United States shall not be obligated to pay any of the allowable costs of the Project unless this Offer has been accepted by the Sponsor within 60 days from the above date of Offer or such longer time as may be prescribed by the Administrator in writing.

8. It is understood and agreed that the areas delineated on Exhibit "A" as 'Doolittle' clear zones at each of the Runway 6-24 will be maintained by the Sponsor completely free from all structures except these required for aids to air navigation, unless otherwise authorized by the Administrator.

9. It is further understood and agreed by and between the parties hereto that the Project Application dated May 18, 1949 for Project No. 9-06-009-801 is hereby amended by deleting the last sentence of Paragraph 7 of Part III thereof and inserting in lieu thereof the following:

> "The airport approach standards to be followed in performing the covenants contained in this paragraph shall be those established by the Administrator in Office of Airports Drawing No. 814, dated April 26, 1950, unless otherwise authorized by the Administrator".

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein

shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and said Offer and acceptance shall compromise a Grant Agreement, as provided by the Federal Airport Act, constituting the obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and the operation and maintenance of the Airport. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer and shall remain in full force and effect throughout the useful life of the facilities developed under the Project but in any event not to exceed twenty years from the date of said acceptance.

UNITED STATES OF AMERICA
THE ADMINISTRATOR OF
CIVIL AERONAUTICS
By /s/ Ora W. Young
Regional Administrator,
Region One

Part II – Acceptance

The STATE OF CONNECTICUT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept said Offer and by such acceptance agrees to all of the terms and conditions thereof.

Executed this 1st day of February 1955.

STATE OF CONNECTICUT
(Name of Sponsor)
By /s/ K.H. Ringrose
Title Director of Aeronautics

(SEAL)

Attest: /s/ Mildred P. Allen

Title: Secretary of State

CERTIFICATE OF SPONSOR'S ATTORNEY

I, Jack Rubin, acting as Attorney for STATE OF CONNECTICUT, ~~go here to certify~~: (herein referred to as "Sponsor"), to hereby certify:

That I have examined the foregoing Grant Agreement and the proceedings taken by said Sponsor relating thereto, and find that the Acceptance thereof by said sponsor relating thereto, and find that the Acceptance thereof by said Sponsor has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the State of Connecticut, and further that, in my opinion, said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at HARTFORD, CONNECTICUT this 1st day of February, 1955.

/s/ Jack Rubin
Title Assistant
Attorney General

APPENDIX D

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

NEW ENGLAND REGION

12 NEW ENGLAND EXECUTIVE PARK
BURLINGTON, MA 01803

Lease No.: DOT-FA74NE-0369
BRADLEY INTERNATIONAL
ILS-ALS R/W6

LEASE

between
STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION

and

THE UNITED STATES OF AMERICA

This Lease, made and entered into this first day of June in the year one thousand nine hundred and seventy four by and between the State of Connecticut, Department of Transportation whose address is 24 Wolcott Hill, Wethersfield, Connecticut, 06109 for itself and its heirs, executors, administrators, successors, and assigns, hereinafter called the lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

Witnesseth:- The parties hereto for the consideration hereinafter mentioned covenant and agree as follows:

1. For the term beginning June 1, 1974 and ending June 30, 1974, the lessor hereby leases to the Government the following described property, hereinafter called the premises, viz:

As contained in Exhibit I attached hereto and made a part hereof.

a. Together with a right-of-way for ingress to and egress from the premises; a right-of-way or rights-of-way for establishing and maintaining a pole line or pole lines for extending electric power, and telecommunications facilities to the premises; and right-of-way for subsurface power, communication and water liens to the premises; all rights-of-way to be over the said lands and adjoining lands of the lessor, and unless herein described by metes and bounds, to be by routes reasonably determined to be the most convenient to the Government.

b. And the right of grading, conditioning, and installing drainage facilities, and seeding the soil of the premises, and the removal of all obstructions from the premises which may constitute a hindrance to the establishment and maintenance of air navigation and telecommunications facilities.

c. And the right to make alterations, attach fixtures, and erect additions, structures, or signs, in or upon the premises hereby leased, which fixtures, additions, or structures so placed in or upon, or attached to the said premises shall be and remain the property of the Government, and may be removed upon the effective date of termination of this lease, or within 90 days thereafter, by or on behalf of the Government, or its grantees, or purchases of said fixtures, additions, structures, or signs.

2. This lease may, at the option of the Government, be renewed from year to year and otherwise upon the terms and conditions herein specified. The government's option shall be deemed exercised and the lease renewed each year for 1 year unless the Government gives the

lessor 30 days written notice that it will not exercise its option before this lease or any renewal thereof expires; *PROVIDED*, that no renewal thereof shall extend the period of occupancy of the premises beyond the 30th day of June 1994;

4. The Government may terminate this lease, in whole or in part, at any time by giving ninety days notice in writing to the lessor, and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

5. No Member of Congress or Resident Commissioner shall be admitted to any share or part of this lease, or to any benefit to arise therefrom. Nothing, however, herein contained, shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

6. The lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, brokerage, percentage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the lessor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this lease without liability, or in its discretion to deduct from the contract price or consideration, the full amount of such commissions, brokerage, percentage, or contingent fee.

7. The Government shall surrender possession of the premises upon the expiration or the effective date of termination of this lease. If the lessor, by written notice at

least thirty days before the expiration or the effective date of termination requests restoration of the premises, the Government at its option shall within ninety (90) days thereafter, or within such additional time as may be mutually agreed upon, either* (1) restore the premises to as good condition as that existing at the time of the Government's entering upon the premises under this lease (changes to the premises in accordance with paragraph 1 above, ordinary wear and tear, damage by natural elements and by circumstances over which the Government has no control, excepted) or (2) make an equitable adjustment in the lease amount for the cost of such restoration of the premises or the diminution of the value of the premises if unrestored, whichever is less. Should a mutually acceptable settlement be made hereunder, the parties shall enter into a supplemental agreement hereto effecting such agreement. Failure to agree to any such equitable adjustment shall be a dispute concerning a question of fact within the meaning of Clause 8 of this lease.

8. (a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the lessor. The decision of the Contracting Officer shall be final and conclusive unless within 30 days from the date of receipt of such copy, the lessor mails or otherwise furnishes to the Contracting Officer a written

---

* Subparagraphs a and b only

appeal addressed to the Secretary, Department of Transportation. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the lessor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the lessor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: *Provided*, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

9. The Lessor grants to the Government the right to utilize any existing power lines, control lines, conduits, or other facilities of the Lessor which are adaptable to use in connection with the purpose of this covenant.

10. The Lessor hereby warrants that it has acquired and possesses an adequate real estate right in the property described herein, and that it is authorized to grant to the Government the rights and interests set forth herein.

11. The right of ingress and egress and the right of way herein granted shall insure to the benefits of the Government and its duly authorized agents, representatives, contractors and employees.

12. The Lessor agrees not to erect or to allow to be erected on the property leased hereby or on adjacent property of the Lessor, any structure or obstruction of whatsoever kind or nature as will interefere [sic] with the proper operation of the facilities to be installed by the Government under the terms of this Lease unless consent thereto shall first be secured from the Government in writing. Further, in order to insure the continuing proper operation of the ALS Facility, the Lessor shall prevent the erection of any structure, or the natural growth of trees, brush that will cause that structure or natural growth to:

(a) protrude an area hereinafter referred to as the light plane. For obstruction clearance purposes this light plane is defined as rectangular in shape, 400 feet wide and symmetrically located about the ALS centerline; it shall start at the landing threshold and extend 200 feet beyond the approach end of the system.

(b) prevent a clear line of sight to all lights of the system from any point on a surface, one-half degree below the glide path and extending 250 feet each side of the centerline, up to 1600 feet in advance of the outermost light in the system.

13. In order to insure the continuing proper operation of the Instrument Landing System(s), the Lessor agrees that certain critical and no-parking areas, which are shown on the attached Drawing No. 1-A-3076, shall be established in the vicinity of the localizer and glide slope facilities.

Where the critical areas lie within the bounds of the Airport, the Lessor agrees not to erect or allow to be

erected any structure of any kind or nature nor to perform or allow to be performed any excavating, grading or planting operations within these areas, without the prior concurrence of the Government. Where the critical areas lie outside the bounds of the airport, the Lessor agrees to extend every effort to negotiate agreements with the property owners involved covering these restrictions.

In the event of natural erosion, the Lessor agrees to perform corrective grading, planting and excavation within the critical area. Such work shall be accomplished during a period which is mutually agreeable to both Lessor and Lessee. Where the critical and no-parking areas lie within the bounds of the airport, the Lessor agrees not to permit the presence of parked aircraft, vehicles or equipment within the critical and no-parking areas, or of free moving aircraft or vehicles within the critical areas which are not under the control of tower personnel when the facilities are in operation. The Lessor agrees to provide and maintain no-parking signs within these areas, when required.

Where the critical and no-parking areas lie outside the bounds of the Airport, the Lessor agrees to extend every effort to negotiate agreements with the property owners involved granting the Lessor the right to establish and maintain no-parking signs on their properties within these areas.

The Lessor further agrees to provide and maintain markings as required, on all paved areas to delineate the limits of the critical area.

14. The Government waives the requirement for radio control of traffic in the vicinity of Runway 6 Localizer on the North Perimeter Road.

15. For and in consideration of the benefit to the Bradley International Airport and the general public using same, the Lessor agrees to and grants to the Government all terms and conditions stated herein at no cost.

16. This lease will supersede License DOT-FA73NE-0308 on commissioning of the CAT-II ILS system.

17. The Lessor further agrees that in the event that relocation or modification of the FAA's facilities associated with air navigation or components thereof hereinbefore described is made necessary by airport improvements or changes made or caused to be made by the airport owner (the term "airport owner" used herein refers to the political subdivision or other competent authority responsible for the airport operation and capital improvements), the costs of such relocation or modification shall be chargeable to the Lessor; that the Government shall have the exclusive right to determine how the relocation or modification project shall be accomplished including, but not limited to, the engineering, site selection, procurement of equipment; construction, installation, testing, flight inspection and recommissioning of the facility; that upon submission by the Government of an estimate of the relocation or modification costs, the Lessor shall transfer to the Government the funds required for the relocation or modification; that in the event the actual costs of relocation or modification exceed the estimate submitted by the Government the Lessor shall pay only the actual costs; that the Government shall have the exclusive right to determine when a relocation or modification of a facility or component thereof has been made necessary by airport improvements or changes made or caused to be made by the airport owner, and that this decision shall be final. It is agreed by and between the Lessor and the Government that in the

event the actual costs of relocation or modification of a facility or component thereof is less than the estimate submitted by the Government the Lessor shall pay only the actual costs.

18. The following changes were made to this Lease prior to execution:

a. Deletion of certain wording in paragraph 2.

b. Deletion of paragraph 3 in its entirety.

c. Addition of certain wording in paragraph 7.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date indicated.

WITNESSES

/s/ Sandra L. Barones

/s/ Madeline P. Mckinnis

STATE OF CONNECTICUT
DEPARTMENT OF
TRANSPORTATION

By /s/ Joseph B. Burns (Seal)
Joseph B. Burns
Commissioner

Date: June 11, 1974

/s/ George J. Bates

/s/ Susan R. Pitt

UNITED STATES OF AMERICA
DEPARTMENT OF
TRANSPORTATION

By /s/ Roland O. Bisson Jr. (Seal)

Date: May 24, 1974

This Agreement is made with the approval of the undersigned, under the provisions of Section 13b-42(b) of the General Statutes of Connecticut, as revised.

/s/ C. Perrie Phillips
Deputy Attorney General
State of Connecticut

Date: JUL 26 1974

/s/ Gerald J. Nelson
Deputy Commissioner of Finance and Control
State of Connecticut

Date: 6/25/74

I, Lucien A. Benjamin chief, Logistic Division of the New England Region, Federal Aviation Administration certify that Roland O. Bisson Jr. is duly authorized in his capacity as the Realty Contracting Officer of the New England Region, Federal Aviation Administration, to enter into Lease DOT-FA74NE-0369 with the State of Connecticut for the premises cited therein.

/s/ Lucien A. Benjamin
Chief, Logistics Division

If agreement is made with the State, County, Municipality or other public authority, the following certificate shall be executed by an authorized official:

I, Gloria Schaffer certify that I am the Secretary of the State of the

State of Connecticut
(State, County, Municipality, or other Public Authority)

that Joseph B. Burns who signed said agreement on behalf of the State of Connecticut was then Commissioner,

Department of Transportation of said State of Connecticut that said agreement was duly signed for and in behalf of said State of Connecticut by authority of its governing body, and is within the scope of its powers.

[SEAL]

/s/ Gloria Schaffer
(Signature) (Corporate seal)
Gloria Schaffer
Secretary of the State
of Connecticut

APPENDIX E

CLOSING REMARKS of proceedings held on April 19, 1978, at the offices of ROGIN, NASSAU, CAPLAN, LASSMAN and BORDEN, ESQUIRES, 111 Pearl Street, Hartford, Connecticut.

APPEARANCES:

Augustus (Ozzie) Simmons

John Kataja

David Salzman, Esq.

Stephen Silverman, Esq.

Ned Rogin, Esq.

Phillip Robbins, Esq.

F. D. Neusner, Esq.

Dennis Cemeriva Esq.

Robert L. Hirtle, Esq.

Reported by:

William G. Crampton
Certified Shorthand Reporter
Notary Public

[8] delivery of the deeds, of course.

MR. HIRTLE: Mr. Simmons, as I understand it you don't want to proceed further with the closing, is that correct?

MR. SIMMONS: Bob Hirtle, I have the highest respect for you just like I sent you the letter, I have the highest and utmost respect for Referee Shapiro and I further qualified it by saying that I am not going to be a party to any deal which is going to be coming out and

being made public whereby the Rogin firm and my good friends here, Dave Salzman and Steve, who I have been very prone to pick on. It is just not fair to everybody to have this kind of an arrangement and I am not going to be a party to it. What the State is attempting to do here is to say okay let's date this thing back so their skirts are clean. They want me to go back and do battle with the Town over the taxes and I say bullshit to that. We are going to clear that matter up before there will be any Goddamned closing. We are going to get that cleared up and they are going to be open and above board. I don't care if it is Referee Shapiro. Hell, it is everybody and I'm telling you, everyone at the table, everything is going to be above board and no dealing is going back to November of '64.

MR. HIRTLE: You will not sign a deed today to consummate the closing, is that what I understand?

MR. SIMMONS: Because the agreement states and [9] I have to say if any portion of it is a nullity then it is a nullity and I am not going to be a party to anything that is a nullity.

MR. NEUSNER: Is that a definitive negative answer?

MR. HIRTLE: You are instructing counsel not to proceed with the closing because you consider it to be a nullity?

MR. SIMMONS: I am going to answer you Bob by saying that I sent you a certified letter expressing my position and when I talked to you on the phone, I said to myself, at least I am going to give them the courtesy of putting in an appearance today. I think that is a sufficient answer.

MR. HIRTLE: So I am not to proceed to closing and you will not sign the deeds today?

MR. SIMMONS: That is correct.

MR. HIRTLE: And the meeting is adjourned.

(Whereupon at 11:44 o'clock a.m. the closing was adjourned).

* * *

APPENDIX F

NO. 202121-8

STATE OF CONNECTICUT	:	SUPERIOR COURT
VS.	:	HARTFORD COUNTY
AUGUSTUS J. SIMMONS	:	APRIL 19, 1978

NO. 199230-9

AUGUSTUS J. SIMMONS

VS.

SAMUEL KANELL, ET AL

NO. 140965

STATE OF CONNECTICUT

VS.

ANASTASIA SIMMONS
AUGUSTUS J. SIMMONS and
CHARLES SIMMONS

NO. 162923

AUGUSTUS J. SIMMONS

VS.

FRANK C. PARIZEK, ET AL

NO. 163875

AUGUSTUS J. SIMMONS

VS.

HORACE B. WETHERELL, ET AL

MOTION TO WITHDRAW AS COUNSEL

The undersigned respectfully move for the permission of the Court to withdraw as counsel for Augustus J. Simmons in the above-captioned matters.

/s/ Robert Hirtle
ROGIN, NASSAU, CAPLAN, LASSMAN AND HIRTLE

/s/ David B. Salzman
DAVID B. SALZMAN, ESQUIRE

/s/ Stephen W. Silverman
STEPHEN SILVERMAN, ESQUIRE

ORDER

The foregoing motion is granted/denied.

BY THE COURT

_____
Clerk

This is to certify that the foregoing has been mailed this day to counsel of record and to the plaintiff.

/s/ Robert L. Hirtle, Jr.
Robert L. Hirtle, Jr.

APPENDIX G

CASE NO. 16 38 75

AUGUSTUS SIMMONS	:	SUPERIOR COURT
vs.	:	HARTFORD JUDICIAL DISTRICT
HORACE WETHERALL, ET AL.	:	OCTOBER 15, 1991

MOTION TO TRANSFER FUNDS

Since 1978 the Clerk's Office has been the Custodian of moneys deposited in the above case. The money was to be paid out upon consummation of a transfer of certain real estate by the named plaintiff. Such a transfer has not yet occurred.

Attached to this motion are memos from the Treasurer of the State of Connecticut and from the Court Operations Unit of the Judicial Branch in explanation of this motion. The Clerk's Office requests the granting of this motion to transfer.

[off – parties have met 11/8/91 and will work out a stipulation to be presented to the court for the withdrawal of all funds and closing of file. /s/ Aronson, J. ARONSON, J. 16/8/91]

/s/ Lucian J. Jachimowicz
LUCIAN J. JACHIMOWICZ
CHIEF CLERK

ORDER

The Court, having heard ther parties, grants the motion.

_____

Judge

APPENDIX H

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
NEW ENGLAND REGION
154 MIDDLESEX STREET
BURLINGTON, MASS. 01803
Tel. 617 223-2271

26 May 1971 (LOGO)

Mr. Augustus J. Simmons
580 Park Avenue
Windsor, Connecticut 06095

Dear Mr. Simmons:

Your letter of 28 April 1971 has been referred to this office for reply to the question concerning the status of federal funding insofar as it relates to Bradley Field, Windsor Locks, Connecticut. The State of Connecticut, under a Grant Agreement issued under Federal Aid Airport Program, Project No. 9-06-009-5708 has been obligated to acquire your property in addition to other properties under separate ownerships. The State has acquired all other properties but has, to date, not succeeded in obtaining adequate interest in your property due, of course, to the litigation arising over the several attempts of the State to condemn the necessary land interests.

This agency has not withheld funds from the State under the project. We have, in fact, participated to the fullest extent under our regulations in all other costs incurred except, of course, costs related to the acquisition of your property. We have administratively determined to reserve rights for the State of Connecticut to request federal participation in the costs of acquiring your land, after it has been accomplished successfully.

While we understand your anxiety to retain possession of your land, the acquisition for the benefit of Bradley Field has been considered to be overriding. Consequently, our agency favorably reviewed the State's request for federal aid. The material submitted with your correspondence is returned herewith.

Sincerely,

/s/ [Illegible]
J. B. KOMICH
for Acting Chief, Airports Division, NE-600

Enclosures

In The United States of Federal Claims

Cover Sheet

Plaintiff(s) or Petitioner(s)

Augustus Simmons, P.O. Box #1, Windsor, CT 06095

If this is a multi-plaintiff case, pursuant to RCFC 20(a), please attach an alphabetized, numbered list of all plaintiffs.

Name of the attorney of record: [See RCFC 81(d)]	Augustus Simmons, Pro Se
Firm Name:	Same as Above
Post Office Box:	#1
Street Address:	245 Broad Street
City-State-Zip:	Windsor, CT 06095
Telephone & Facsimile Numbers:	(860) 569-6714

Is the attorney of record admitted to the Court of Federal Claims Bar? N/A
If **NO**, please call (202) 219-9630 for admission papers and instructions.

Nature of suit code: [5] [1] [2]

Select only one [three digit] nature of suit code from attached sheet and if numbers 118, 134, 226, 312, 356, or 528 are used, please explain.

_____

_____

Government Agency Involved: [F] [A] [A]

See attached Sheet for three digit code.

Amount Claimed: $5,374,200.00

If to be determined, put the phrase "to be determined" in Amount Claimed Space.

Vaccination Date: (**Vaccine Cases Only**) N/A

If this is case related to any pending or previous case you are **required** to file a separate notice of related case(s). See RCFC 77(f)(2) (General Order No. 36)

IN THE UNITED STATES CLAIMS COURT

COVER SHEET

(Only this sheet must accompany original complaint or petition)

1. ***PLAINTIFF(S) or PETITIONER(S)***

a. Augustus Simmons
P.O. Box #1
Windsor, CT 06095

If this is a multi-plaintiff case, pursuant to Rule 20(a), please attach an alphabetized, numbered list of all plaintiffs.

DEFENDANT or RESPONDENT

b. x United States of America

or

_ Secretary of the Dept of Health and Human Services

2. Name of attorney of record: Augustus Simmons, Pro Se (See Rule 81(d)(1))

3. Is the attorney of record admitted to the Claims Court Bar? N/A

4. Fill in the appropriate numbers or letters from the information sheet; *ONLY ONE FOR EACH ITEM:*

a. Nature of Suit 12/460 (Numbers) b. Agency TRN - (F.A.A.) (Letters) 10/220L

c. If Vaccine case, put one 2-digit number from section I, in front of the (/); one 3-digit number from section II after the (/) and state the date of the vaccination N/A (date)

5. Amount claimed: 5,374,200.

6. Number of counts: Three (3)

7. If Contract case, under the Contract Disputes Act? _____

8. If Tax case, specify IRC sections involved _____

and number of tax years _____

9. If taking of realty, state number of acres 6.7 Acres

10. If item 4a above has 380 after slash, or 4b has (0), please explain: _____

11. Is case related to any pending or previous U.S. Claims Court case? No

See Rule 77(9f)(2), regarding separate filing of a Notice of Related Case(s), stating whether *any pending or previous* action in *any court* and the action being filed appear to be related.

_____

APPENDIX I

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

AUGUSTUS J. SIMMONS P.O. Box #1 Windsor, Connecticut 06095 Plaintiff, v. THE UNITED STATES OF AMERICA, Defendant.	No.: _____ Judge: _____

COMPLAINT

For its complaint in this action, Plaintiff, Augustus J. Simmons, alleges as follows:

INTRODUCTION

1. Plaintiff, a private landowner, brings this lawsuit against the United States to recover damages caused by the – Physical Invasion – on or about July 1, 1962 by the Federal Agency (FAA) with the imposition of an extraordinary servitude of such a unique character that it was a "TAKING" without regard to other factors for which just compensation should be made.

Where the Federal Aviation Administration entered upon the surface of private lands of Plaintiff and taken exclusive possession with the erection and maintenance of navigational instrumentation was a definite exercise of complete and exclusive dominion, jurisdiction, and control over the surface of Plaintiff's Parcel "C" as shown and depicted in Map Book #12, page 568 of Town of East

Granby, Connecticut Land Records containing 5.97 acres, was an appropriation of private property without any compensation ever made to the landowner, without any attempts ever to lease the property, the policy at several airports in the northeast region.

The F.A.A. acting pursuant to and under a 1955 Grant Agreement, #9-06-009-5078 with the state agency, Connecticut Department of Transportation, who attempted condemnation proceedings two (2) times, both being ruled null and void by the Connecticut Supreme Court (160 Conn 492 (1971)), and, in lieu of addressing damages with a third condemnation attempt, the Connecticut Department of Transportation has been engaged in a joint conspiracy with the F.A.A. against the landowner by resorting to illegal, unlawful, unconstitutional, uncompensated – LEASING – of Plaintiff's private property, continually, during condemnation attempts, continuing after the courts declared all activity null and void, up to present date.

NO legal action has been initiated in the state or federal courts to legally acquire the necessary property interests, or pay just compensation, since March 24, 1972 when ownership reverted back to the Owner at Vol. 52, pages 242, 243 of Town of East Granby, Connecticut Land Records as a result of the null and void condemnation attempts.

The prejudice to the landowner with payment of property taxes and several lienholders against the properties that have been outstanding for decades, combined with the length of delay, reason for delay, Owner's assertion of his right to compensation and the prejudice to the Owner are part of the four-factor test for evaluating

constitutionality of delay between the time of taking and the payment of just compensation, sought in this action.

PARTIES

2. Augustus J. Simmons, petitioner, is the Owner of three (3) Parcels (A, C, and D) of private property adjacent to Bradley Airport, Connecticut's premier airport, that was one contiguous parcel until November 12, 1964 when it was subdivided, has been in the family since 1924 and only Parcel "C" consisting of 5.97 acres is in issue in this action involving the Federal Aviation Administration.

3. Defendant is the United States of America, acting through FAA and party to Federal Grant Agreement #9-06-009-5078, who has exclusive jurisdiction over the territory invaded for navigational instrumentation purposes.

4. Defendant is also the State of Connecticut, Department of Transportation, sponsor of Bradley Airport and party to Federal Grant Agreement #9-06-009-5078 (1955) upon which reliance for the physical invasion was relied upon by F.A.A.

JURISDICTION

5. This court has jurisdiction over all claims found upon the Constitution of the United States or . . . upon any contract, express or implied with the Government of the United States. 28 USC § 1491(a). This claim arises from the breach by the defendants of their contractual obligation under Federal Grant Agreement #9-06-009-5078.

CONTRACT

6. This action rests on a contract – taking on behalf of the United States, made by officials duly authorized and under such conditions that a contract, express or implied – in fact – to pay compensation, entitles the Owner to sue in the Court of Claims, grant agreements notwithstanding. *United States v. Causby*, 328 US 256, 66 S.CT. 1062, 90 L.Ed 1206 (1946).

(U.R.A.)

7. Under the Uniform Real Property Acquisition Act (P.L. 91-646 (1971)), 42 USC § 4601 et seq congress made very clear the Federal Agency is accountable under 42 USC § 4628 that reads: "Such acquisition shall for purposes of the Uniform Act, be deemed an acquisition by the Federal Agency having authority over such program or project."

PLAINTIFF'S CLAIMS

COUNT 1

(Breach of Contract)

8. Paragraphs 1 through 7 are incorporated herein by reference as if fully set forth in full.

9. The Government, FAA, throughout the forty (40) year servitude imposed on the landowner, has never directly contacted or attempted to negotiate a contract, agreement, lease or purchase with the Owner.

10. The Government is/was fully aware at all times that the sponsor had not-ever-acquired a satisfactory property interest as defined in 14 CFR § 152.3.

11. Under 49 USC § 44502 Administrator of FAA may –

(A) Acquire, establish, improve, operate and maintain air navigation facilities, and

(B) Provide facilities and personnel to regulate and protect air traffic.

12. The glide slope for runway 6-24, the primary runway with a 9500' foot length is a 50 to 1 ratio making the total of Plaintiff's Parcel "C" unmarketable without any monetary considerations.

13. A sizeable portion of the invaded Parcel is in the "Clear Zone", now referred to as the "Runway Protection Zone" over which the Government has EXCLUSIVE jurisdiction and EXCLUSIVE responsibility under contract and regulation for the servitude imposed.

14. Where the Government has numerous leases throughout the northeast region with private landowners, under similar circumstances, the failure to contact the Owner, even for one (1) dollar a year is repetitive trespassing, to avoid a contract.

COUNT II

(Illegal Exaction in Violation of Due Process)

15. Paragraphs 1 through 14 are incorporated herein by reference as if fully set forth in full.

16. The Government action of continuous engaging in leases with the sponsor to avoid paying rent for such a prolonged period of time, to the Owner, is a monstrous exaction under the due process clause. (PL.EX. #1)

17. By letter to Plaintiff/Owner in 1971, the Government acknowledged that the sponsor had never acquired a satisfactory property interest, yet continued entering into leases with the sponsor. (PL.EX. #2)

18. By letter to the Government (FAA) in 1982 the Owner made demand for the continued use of the premises at $10,000 – dollars per month and the reply from Chief Counsel (Murdock) for FAA was "SORRY SIR, we have a lease from the State of Connecticut."

19. Nowhere, at any time, in the decades of State Court activity has the State Judicial System acknowledged or mentioned the fact that a federal installation and grant agreement were in effect for Plaintiff's Parcel "C" giving the FAA a subsidized "Free Ride" under the due process clause. (PL.EX. #3)

20. That the FAA had favorable shelter in the Federal Courts can be found in the Second Circuit Court of Appeals remand in 1973 (472 F2d 509) whereby the court stated: If the *State* had fenced off and put *Airport Runway Lights* on a portion of landowner's property without compensation or instituting court proceedings was a cause of action under § 1983 (Civil Rights).

21. That the FAA continued to have favorable shelter in the District Court and Appeals Court (2nd Circuit) is evidenced with a document filed by landowner entitled "AFFIDAVIT, CONFLICT OF INTEREST, CONSPIRACY, FRAUD", Filed February 4, 1982 and not addressed by District Court Judge Cabranes who ruled "Res Judicata" on a State Supreme Court Decision (180 Conn 587 (1980)), rendered under Plaintiff's private tort action, without any action having been initiated, or docketed, or hearings held before the Superior Court, nor any

parties given notice or served and for challenging such unconstitutional activity the landowner is labeled as "pertinacious" and filing vexatious lawsuits.

22. There *Has Not* been any court proceedings initiated or commenced by the State, or any other parties, since ownership reverted to the Owner on the land records on March 24, 1972 in Town of East Granby Land Records, but, the exaction by leases is continuing with the Owner forced to subsidize the Government operation with lienholders.

COUNT III

(Taking of Property Rights Without Just Compensation)

23. Paragraphs 1 through 22 are incorporated herein by reference as if fully set forth in full.

24. The Government was and is unequivocally obligated under the contract implied, in fact, where the officials of government, acting under authority of Congress took Plaintiff's private property, Parcel "C" consisting of 5.97 acres, for public use.

25. Where the taking occurs when the Government physically requires property for itself mandates compensation. *Chicago, B.L.O.R. Co. v. Chicago*, 16 US 226, 17 S. CT. 581, 41 L.Ed. 979 (1897).

26. The Government directly appropriating private property for its own use is . . . the classic taking case . . . under the Fifth Amendment. *United States v. Security*, 459 US 70, 78; 103 S. CT. 407, 412; 74 L.Ed. 2d 235 (1982).

27. The "Physical Invasion" on the surface of private property by the Government is an action of such a unique character that is a taking without regard to other factors. *United States v. Causby*, 328 US 265; 66 S. CT. 1062; 90 L.Ed. 1206 (1946); *Hodel*, 481 US at 715, 716; 107 S. CT. AT 2082-2083 (1987).

28. The Government's failure and refusal to comply with the requirements of the constitutional contract constitutes an unlawful taking of Plaintiff's vested contract and real property rights.

29. Plaintiff/Owner is entitled to just compensation for this taking of Plaintiff's vested contract rights and this taking Plaintiff's real property for the period of July 1, 1962 to June 30, 2002, a total of forty (40) years is $5,374,200.00, as itemized.

30. Plaintiff will entertain the prospect of a 20 year lease starting with July 1, 2002 at $14,000.00 per month, payable semi-annually with an opener after 10 years for inflation consideration.

COMPENSATION

31. July 1, 1962 to June 30, 1972, 6,000.00 per month

120 months x 6,000.00 = 720,000.00	$ 720,000.00

July 1, 1972 to June 30, 1982, 8,000.00 per month

120 months x 8,000.00 = 960,000.00	$ 960,000.00

July 1, 1982 to June 30, 1992, 10,000.00 per month

120 months x 10,000.00 per month	$1,200,000.00

July 1, 1992 to June 30, 2002, 12,000 per month

120 months x 12,000.00 = 1,440,000.00	$1,440,000.00
	$4,320,000.00
ATTORNEY'S FEES, COSTS, TAXES, ETC.	$ 750,000.00
	$5,070,000.00
INTEREST AT 6%	$ 304,200.00
	$5,374,200.00

NOTE:

Owner's loss, not taker's gain is measure of the value of property taken. *U.S. v. Miller*, 317 US 369; 87 L. Ed. 336; 63 S. CT. 276; 147 ALR 55.

PARCEL "C"

(Map Book #12, Page 568)

A certain piece or parcel of land, containing 5.97 acres, situated in the said Town of East Granby on the northeasterly side of Route #20, also known as rainbow road, and also known as Parcel C on a map entitled: "property of Anastasia Simmons east side – Rainbow Road, East Granby, Conn. W.M. Alford Civil Engineer Windsor Conn. Scale 1 inch = 60 ft., October 1964", which map is on file in the Town Clerk's office in said town of East Granby and being more particularly bounded and described as follows:

Beginning at a point in the northeasterly side of Route #20 in the Town of East Granby which point is six hundred ninety-three (693) feet southeasterly from the

southeasterly corner of land now or formerly of Charles Comer, as measured along the northeasterly line of Route #20;

Thence N 20° 27' 30" E along land now or formerly of Charles A. Simmons, eight hundred sixty and forty-six one-hundredths (860.46) feet to a point;

Thence S 29° 09' 50" E along land now or formerly of the State of Connecticut, one hundred sixty-three and seventy one-hundredths (163.70) feet to a point;

Thence S 22° 23' 40" W along land now or formerly of the State of Connecticut, eighty-one and twenty-four one-hundredths (81.24) feet to a point;

Thence S 09° 18' 30" W along land now or formerly of the State of Connecticut, fifty-nine and forty-seven one-hundredths (59.74) feet to a point;

Thence S 2° 13' 40" E along land now or formerly of the State of Connecticut, ninety-one and fifty-five one hundredths (91.55) feet to a point;

Thence S 05° 06' 30" W along land now or formerly of the State of Connecticut, one hundred three and seventy-nine one hundredths (103.79) feet to a point;

Thence S 09° 59' 20" W along land now or formerly of the State of Connecticut, one hundred seventeen and four one-hundredths (117.04) feet to a point;

Thence S 16° 13' 10" W along land now or formerly of the State of Connecticut, one hundred forty-eight and forty-four one-hundredths (148.44) feet to a point;

Thence S 20° 3' 00" W along land now or formerly of the State of Connecticut, two hundred seventy-four and

forty-six one-hundredths (274.46) feet to a point in the northerly line of Route #20.

Thence along a curve whose radius is 1834.86, a distance of four hundred fifty and ninety one-hundredths (450.90) feet to the point or place of beginning.

PRAYER FOR RELIEF

Wherefore, Plaintiff Augustus J. Simmons respectfully requests that the Court enter judgment in his favor and against The United States as follows:

(a) On Count I, for damages in an amount as itemized in #31.

(b) On Count II, for damages in an amount as itemized in #31.

(c) On Count III, for damages in the amount as itemized in #31.

(d) Interest as permitted by law.

(e) Costs of suit, including reasonable attorneys' fees as permitted by law; and

(f) Such other and further relief as this Court may deem proper.

Dated: 4-10-2002

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

AUGUSTUS J. SIMMONS P.O. Box #1 Windsor, Connecticut 06095 Plaintiff, v. THE UNITED STATES OF AMERICA, Defendant.	)	No.: _____ Judge: _____

MOTION – THIRD PARTY

Plaintiff, Augustus J. Simmons, herein names the following as a THIRD PARTY DEFENDANT.

James F. Byrnes, Jr., Commissioner

Connecticut Department of Transportation

2800 Berlin Turnpike, P.O. Box 317546

Newington, CT 06131-7546

The Connecticut Department of Transportation, Successor to the Connecticut Department of Aeronautics, who entered into the original GRANT AGREEMENT with the United States of America on behalf of the State of Connecticut, Project No:- 09-06-009-5078, Contract No: CICA 36-A on January 12, 1955 for a project of development of the Bradley Field Airport consisting of the following described airport development:

"Acquisition of land for 'Doolittle' clear zones both ends runway 6-24; acquisition of land and navigation easements for protection of approaches 6-24, 19, 33."

As evidenced by acceptance, ratification, and adoption of said Grant Agreement, as provided by the Federal Airport Act – agrees to all of the terms and conditions thereof.

Executed February 1, 1955

K.H. Ringrose

Director of Aeronautics

The State of Connecticut, Department of Transportation, acting as the – LESSOR – has entered into a myriad of LEASES to the United States of America, Department of Transportation (Federal Aviation Administration) warranting that it has acquired and possesses an adequate real estate right in the property described herein, (Parcel "C"), and that it is authorized to grant to the Government the rights and interests set forth herein.

The Connecticut Department of Transportation, as LESSOR, has *NEVER* acquired a "satisfactory property interest" as defined in 14 C.F.R. § 152.3 of Plaintiff's Parcel "C".

/s/ Augustus J. Simmons
Augustus J. Simmons, Plaintiff
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

APPENDIX J

STATE OF CONNECTICUT

SUPREME COURT

NO. HHD CV70-0163875S

AUGUSTUS J. SIMMONS

v. : **MAY 31, 2000**

HORACE B. WETHERALL
ET AL.

ORDER

THE MOTION OF THE PLAINTIFF, FILED MAY 1, 2000, TO VACATE, HAVING BEEN PRESENTED TO THE COURT, IS HEREBY ORDERED **DISMISSED**.

IT IS FURTHER, ORDERED THAT THE PLAINTIFF IS HEREBY PROHIBITED FROM FILING PLEADINGS IN THIS COURT THAT ARE RELATED TO DOCKET NUMBER CV70-0163875.

BY THE COURT,

/s/ Francis Drumm
CHIEF CLERK

NOTICE SENT: MAY 31, 2000
AUGUSTUS SIMMONS, PRO SE
PAUL K. PERNEREWSKI, ASSISTANT
ATTORNEY GENERAL
ROGIN, NASAU, CAPLAN,
LASSMAN & HIRTLE
CLERK, HARTFORD J.D.
HON. JOHN J. LANGENBACH

APPENDIX K

STATE OF CONNECTICUT

LOUIS SHAPIRO
STATE REFEREE
HARTFORD, CONN. 06106

SUPREME COURT BUILDING
P.O. DRAWER N. STATION A

July 18, 1980

Jason E. Pearl, Esquire
19 South High Street
P.O. Box 183
New Britain, CT 06050

Re: No. 16 38 75
Augustus J. Simmons v. Horace B. Wetherell, et al

Dear Mr. Pearl:

This will acknowledge receipt of your Motion For Disbursement of Funds by Clerk dated July 16, 1980 and received by me this morning.

Since your phone call to me, I am not certain as to what steps should be taken in order to make disbursement as requested by you. Since the amount attached by Atty. Salzman et als was accomplished by bringing suit, it would seem to me that before distribution could be made, that this claim be reduced to a judgment. If there is a more expeditious way to proceed, I would appreciate hearing from you as soon as possible.

I'm also concerned about the order of distribution since the land records, according to your memorandum attached to your letter, show a list of encumbrances prior to the date of the Salzman attachment.

Also, in view of the many complications which I anticipate, would it not be better to have this issue handled by the

Superior Court? I am not equipped, as a referee to give notice to the various creditors which I believe may be necessary. It would seem that your motion could be handled properly by the Superior Court.

Very truly yours,

Louis Shapiro
State Referee

LS:mcd
cc: Ronald Cassidento, Esquire
William A. McQueeney, Esquire